

## **REMARKS/ARGUMENTS**

In the Office Action, the Examiner issued a restriction requirement alleging that the application claims twenty (20) distinct inventions (Groups I-XX).

### **1. Election in Response to Restriction**

Pursuant to 37 C.F.R. § 1.142, Applicants hereby elect Group I (claim 86 and parts of claims 1-14, 25-32, 58, 59, 66, 69-71, 74, 84 and 85) with traverse. Claims 15-24, 33-57, 59-65, 67, 68, 72, 73 and 75-83 are withdrawn as being directed to non-elected subject matter pursuant to 37 C.F.R. 1.142(b). Claims 14, 26, 30, 32 and 74 are being cancelled. All of the pending claims now read on the elected subject matter.

Applicants reserve the right to petition for rejoinder under 37 C.F.R. § 1.144 with regard to the non-elected claims, once the elected claims are placed in condition for allowance. Applicants also reserve the right pursuant to 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of the present application.

### **2. Traversal of Examiner's Restriction**

Applicants traverse the Examiner's restriction of the application on the grounds that the present claims are drawn to a single invention and restriction, to the extent that it is applicable at all, should be based only on a restriction as to species. In this regard, claim 1 is a genus claim (*i.e.*, generic) that links the species of claims 2-86. MPEP 809.03. Genus claims that link together species claims act to prevent restriction between inventions, even when the inventions would otherwise be divisible. MPEP 809.03.

Here, each of claims 2-86 contains all of the limitations of claim 1. Claim 1 relates to compounds of Formula XXVIII wherein R<sub>3</sub> and R<sub>4</sub> are taken together to form a substituted or unsubstituted 5 or 6 membered ring. All of the remaining independent claims (*i.e.*, claims 13, 34, 36, 44, 46, 55, 58, 70 and 86) contain all of the features of claim 1 but specify particular arrangements of the ring formed by R<sub>3</sub> and R<sub>4</sub>. For example, claim 13 contains all of the

limitations of claim 1 but specifies that R<sub>3</sub> and R<sub>4</sub> form an optionally substituted, six membered carbocyclic or nitrogen-containing heterocyclic ring. Likewise, claim 34 contains all of the limitations of claim 1 but specifies that R<sub>3</sub> and R<sub>4</sub> form certain nitrogen and carbonyl containing rings.

Accordingly, claim 1 is a linking claim that must be examined with the invention elected, and should claim 1 be allowed, the restriction requirement must be withdrawn. MPEP 809. Any claims directed to the nonelected inventions, previously withdrawn from consideration, which depend from or includes all the limitations of the allowable linking claim must be rejoined and should be fully examined for patentability. MPEP 809.

### **3. Request for Reconsideration**

In view of the foregoing, Applicants submit that claim 1 should be examined in its entirety. If claim 1 is found to be allowable, then the restriction requirement should be withdrawn and the remaining claims examined. However, if the Examiner nonetheless insists on a restriction as to the invention, Applicants propose a more moderate four-way restriction between New Group A where Q is CO, CS or C(=NR<sub>9</sub>) and R<sub>3</sub> and R<sub>4</sub> form a six-membered ring; new Group B where Q is SO or SO<sub>2</sub> and R<sub>3</sub> and R<sub>4</sub> form a six-membered ring; New Group C where Q is CO, CS or C(=NR<sub>9</sub>) and R<sub>3</sub> and R<sub>4</sub> form a five-membered ring; and new Group D where Q is SO or SO<sub>2</sub> and R<sub>3</sub> and R<sub>4</sub> form a five-membered ring.

### **4. Claims 1, 13, 58 and 70**

Claims 1, 13, 58 and 70 are being amended to provide the definition for Q using the standard Markush language.


### CONCLUSION

Applicants earnestly believe that they are entitled to a letters patent, and respectfully solicit the Examiner to expedite prosecution of this patent application to issuance. Should the Examiner have any questions, the Examiner is encouraged to telephone the undersigned.

Respectfully submitted,

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